IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

NOTICE OF MOTION NO.673 OF 2005

IN

WRIT PETITON NO.60 OF 2005

Sarla Polyester Ltd. ..Petitioner.

V/s.

The Union of India & Anr. ..Respondents.

Mr.Prakash Shah i/b. D.S.K.Legal for petitioner.

Mr.B.A.Desai, Additional Solicitor General with A.M. Sethna i/b. T.C. Kaushik for respondents.

CORAM : V.C. DAGA AND J.P.DEVADHAR, JJ.

DATED : 5TH MAY, 2005.

P.C. :-

1. Heard the learned counsel for the rival parties.

2. Petitioner in this Civil Application is seeking modification of the order dated 4th February, 2005 passed by this Court; wherein Rule with interim relief in terms of prayer clause (c) was granted subject to the following conditions:-

a) The petitioner shall deposit a sum of Rs.75,00,000/- within a period of two weeks from today with the respondent No.2.

b) The petitioner shall execute an unconditional bank guarantee in the sum of Rs.25,00,000/- in favour of the Registrar General of this Court within a period of two weeks thereafter and undertake to keep the said bank guarantee alive till the above petition is heard and disposed of finally.

c) The petitioner shall pay a sum of Rs.5,00,000/- towards the duty demanded as per the show cause notice dated July 14, 2004 to the respondent No.2.

d) The petitioner shall not store any of the imported polyester or other material except in the petitioners premises and at no other warehouse or places.

e) The petitioner shall not encumber upon Unit No.1 which is unencumbered.

f) In the event of violation of any of the conditions imposed hereinabove, the interim relief granted hereinabove shall stand vacated forthwith.

2. Petitioner after complying the aforesaid terms realised that the Unit No.1 of the petitioner was encumbered to the Financial Institutions by way of collateral security to secure borrowings made to the extent of Rs.45 crores.

3. The petitioner on their own approached this Court to bring it to the notice of this Court that their Unit No.1 is encumbered with the Financial Institutions, as such the condition/term (e) of the interim order referred to hereinabove needs modification.

4. In order to consider the prayer for modification of one of the terms of interim relief, we were once again taken through the order impugned in the petition passed by the Assistant Commissioner of Central Excise, Division-II, Silvassa; dated 10th January, 2005 by which the licence granted to the petitioner under sub-section (1) of section 58 has been cancelled in exercise of powers under sub-section 2(b) of section 58 of

the Customs Act, 1962 with further order direction the petitioner 100% EOU, Unit-1 & II to pay forthwith appropriate customs and central excise duties under the Customs & Central Excise Act on the capital goods and raw materials procured duty free, semi-finished goods lying in stock on the date of cancellation of the said licence which is yet to be crystalised.

5. The petitioner has complied all the terms of the interim order, except that of clause (e) of the said order.

6. The learned counsel appearing for the petitioner submitted that the picture placed before the Court that Unit No.1 was unencumbered was under the bona fide mistake and there was no intention, either to mislead this Court or the Revenue. The petitioners by way of additional affidavit have submitted before the Court that the monthly consumption of the petitioners (both import and indigenous) of raw materials viz. yarn and chips is Rs.3.64 crores. This average was taken on the basis of consumption for the period from April, 2004 to 31st March, 2005. It is further submitted that if the petitioner does not avail exemption, the average duty of Rs.1.23 crores will be payable by the petitioners per month. Under these circumstances, the petitioners submit that considering the

amount of average duty exemption which the petitioners have availed on monthly basis, condition (e) of the order referred to hereinabove may be substituted with any other reasonable security so as to secure the interest of the Revenue.

7. As already stated hereinabove, pursuant to the interim order, the petitioner has deposited Rs.75,00,000/- in cash and furnished bank guarantee of Rs.25,00,000/- and Rs,5,00,000/- towards the amount duty was paid on 14th February, 2005. Thus, it is clear that almost Re.1 crores and Rs.5 lakhs security has already been furnished by the petitioner. As against this, if the monthly exemption of duty liability is taken to be in the sum of Rs.1 crore and Rs.23 lakhs, then, the shortfall would be that of Rs.20 to Rs.25 lakhs.

8. The prayer made by the petitioner for modification of the order is vehemently opposed by Mr.Desai the learned Additional Solicitor General. He insisted that since the encumbrances on Unit No.1 is to the tune of Rs.45 crores, the petitioner should be directed to furnish security in the sum of Rs.45 crores by way of another bank guarantee over and above the already furnished. It is not possible for us to accept this submission. The endeavour of this Court in our view

should be to secure the interest of the Revenue to a maximum extent.

9. Having heard rival parties, we must place it on record that this is not a case where the revenue has come before this Court after finding that the Unit No.1 was encumbered to the Financial Institution by the petitioner. It is the petitioner itself who has come before this Court to seek modification of the order. It is thus clear that the bona fides of the petitioner is beyond doubt. In that view of the matter, we feel that justice would be done by directing the petitioner to furnish additional bank guarantee of any nationalised bank in the sum of Rs.75 lakhs within period of 2 weeks from today.

10. In the result order dated 4th February, 2005 is modified with respect to No.(e) of para 3 only and the same is substituted with that of "bank guarantee of any nationalised bank in the sum of Rs.75 lakhs. Rest of the order would remain as it is. No further encumbrances shall be created by the petitioner on their Unit No.1"

11. Since two weeks time is granted to furnish additional bank guarantee, till then, order dated 4/2/2005 shall hold the field.

12. Civil application stands disposed of accordingly with no order as to costs.

(V.C. DAGA, J.)

(J.P.DEVADHAR, J.)